

## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Teamsters Local 633 of New Hampshire

Petitioner

v.

City of Manchester Public Library

Respondent

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Case No. M-0786

Decision No. 2002-007

### REPRESENTATIVES

For Teamster Local 633 of New Hampshire:

John D. Burke, Esq.

For the City of Manchester Public Library:

David A. Hodgen, Chief Negotiator

Also Appearing:

John Brisban, Library Director

Thomas D. Noonan, Business Agent

### BACKGROUND

The Teamsters Local 633 of New Hampshire, (hereinafter referred to as the "Petitioner") filed a Petition for Certification with the Public Employee Labor Relations Board (hereinafter referred to as the "PELRB") on October 15, 2001 proposing creation of a single bargaining unit comprised of all regular full time and regular part time positions entitled "Assistant Librarian", "Librarian I", "Librarian II", "Clerk I", "Clerk II", "Information Specialist", "Office Assistant" and "Secretary" employed by the City of

Manchester (hereinafter referred to as the "City") at the Manchester Public Library . On that same day, the PELRB forwarded a "Notice of Filing" to the City. On October 30, 2001 the City filed its exceptions to the petition. On November 6, 2001 a Pre-Hearing Order and a separate notice scheduling an evidentiary hearing to be conducted on November 16, 2001 was forwarded to the parties

A hearing on the matter was held before the undersigned Hearing Officer on November 29, 2001. Several issues raised by the Respondent's Exceptions were preliminarily addressed through discussions between the respective representatives such that the only issues upon which testimony and evidence was introduced at the hearing were directed to Respondent's Exception #1 involving a determination of whether or not the Union had completed "Item 6" on the petition form and had made a reasonable effort to reach agreement on the composition of this unit. Following those same preliminary discussions, the parties agreed that no additional evidence, beyond that which appeared in the pleadings, was necessary to a determination of the issue raised by Respondent's Exceptions #5 and #6 calling for a determination of whether or not the Union's Petition for Certification is before the PELRB in a timely manner. The parties agreed to submit post-hearing Memoranda of Law on this issue of timeliness. The parties further agreed that in the event the unit composition was to be accepted as submitted and an order of election to issue by the PELRB, the Librarian I's and Librarian II's were professional positions and would vote separately. The Union moved to amend the budget submission date appearing within the Petition to read "March 31" and, without objection, it was granted. The hearing then went forward with witness testimony presented on the only evidentiary issues remaining between the parties, namely Respondent's Exception #1, described above. Following the conclusion of the hearing, the record remained open for submission of legal memoranda. The parties filed their respective Memorandum of Law on December 12, 2001 and the record was thereupon closed.

#### FINDINGS OF FACT

1. The City of Manchester (Respondent) employs persons to carry out the functions of municipal government within the Manchester Public Library and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The Teamsters Local 633 of New Hampshire (Petitioner) seeks to become the exclusive bargaining representative of a proposed bargaining unit comprised of certain employees of the Respondent who perform work at the Manchester Public Library in the positions of Assistant Librarian, Librarian I, Librarian II, Librarian Clerk I, Librarian Clerk II, Information Support Specialist, and Office Assistant.
3. It was agreed by the parties that in the event the PELRB found the Union's petition to have been completed and timely filed, the composition for the bargaining unit would consist of those positions listed in Finding #2, above.

4. It was agreed by the parties that the positions of Librarian I and Librarian II are professional positions and would vote separately in the event the PELRB ordered an election..
5. It was also stipulated that the budget submission date for the City is March 31.
6. At all relevant times, John Brisbin was the Library Director and had been for the last ten years.
7. At all relevant times, Thomas D. Noonan was the Business Agent and a union organizer for Teamsters Local 633 and had been for approximately twenty years.
8. Prior to October 12, 2001, Mr. Brisbin learned from an employee that there was an effort underway to "unionize" workers employed within the library.
9. During the morning of October 12, 2001 at approximately 9:15 A.M. Mr. Noonan went to the Manchester Public Library and called upon Mr. Brisbin. His purpose in so doing was to discuss a proposed Petition for Certification of a bargaining unit that he planned to file with the PELRB. (Respondent's Exhibit A).
10. Mr. Brisbin was either not present or was unavailable to talk with Mr. Noonan on that occasion. Mr. Noonan left what he characterized as a "courtesy" copy of the proposed Petition and his business card (Respondent's Exhibit B) for Mr. Brisbin with Debbi Marchand, a library employee, with an oral request that Mr. Brisbin call him to discuss its contents.
11. Upon receiving the documents and the request for a response to the Union from Debbi Marchand, Mr. Brisbin faxed a copy of the Petition (Respondent's Exhibit A) to the City Solicitor later in the morning. Mr. Brisbin did not attempt to call or otherwise contact Mr. Noonan on October 12, 2001 either to discuss the substance of the Petition or to notify him that he had transferred responsibility to do so to anyone else within the city administration.
12. The copy of the Petition left with Mr. Brisbin on October 12, 2001 contained a blank space at Item #6. (See Respondent's Exhibit A) that called for an indication of whether the parties agreed to the composition of the unit or not. It also stated the budget submission date as "December".
13. Mr. Noonan returned directly to his office on October 12, 2001 to await a response from Mr. Brisbin. After waiting approximately an hour, Mr. Noonan completed the blank space on the form indicating that there was not agreement to the proposed Petition and prepared to file that Petition with the PELRB.

14. Later that day, Mr. Noonan forwarded the completed Petition for Certification to the PELRB (Union Exhibit #2) and sent a copy to Mr. Brisbin by certified mail (Union Exhibit #3). The Petition was received and deemed filed by the PELRB on October 15, 2001. Mr. Brisbin received a copy of this filed Petition by certified mail on or about October 15, 2001 and again testified that he faxed it on to others. He did not call or respond to Mr. Noonan on that occasion.
15. Sometime after Mr. Brisbin's copy of the initial petition (Respondent's Exhibit A) was faxed to the Solicitor, David Hodgen, the city's Chief Negotiator, reviewed it. Mr. Noonan testified that Mr. Hodgen told him at a later time that the contents had been discussed and considered by management.
16. On or about October 25, 2001 Mr. Hodgen forwarded a list of incumbent library employees to the PELRB and on or about October 30, 2001 Mr. Hodgen, on behalf of the City of Manchester, filed its exceptions to the Petition.
17. On November 6, 2001, the PELRB issued a pre-hearing Order and a Notice of Hearing to the parties announcing a scheduled hearing for November 16, 2001. Upon notice from the Union of its unavailability on that planned date, a new hearing date of November 29, 2001 was scheduled with the agreement of both parties.
18. In a letter, dated November 9, 2001, Mr. Noonan wrote to Mr. Brisbin (Union Exhibit #1) recounting his actions in filing the Petition and soliciting any discussion Mr. Brisbin would offer in connection with the formation of the bargaining unit.

### **DECISION AND ORDER**

The legislative mandate of the Public Employee Labor Relations Board (PELRB) includes the authority to consider petitions for the certification of bargaining units (RSA 273-A:10), determine appropriate composition of bargaining units (RSA 273-A:8, I) and thereafter to exercise authority to order elections, if appropriate (RSA 273-A:10, I(b)). Where the parties involved cannot agree as to the contents of a filed Petition for Certification on their own, the PELRB conducts a hearing for such purpose, makes a decision and then issues an appropriate order of election under Pub 303.01. In the instant matter, the parties have conditionally agreed to the unit composition, pending a hearing on issues raised by the City involving the manner and timeliness of certain actions undertaken by the Union in connection with its filing of the Petition for Certification.

The chronology of the parties' actions is as follows. Some time prior to October 12, 2001 a subordinate library employee told the Library Director learned of the effort by the Union to "unionize" certain library employees. On October 12, 2001 the Library Director learned from a subordinate library employee of Mr. Noonan's visit to the library and his failed attempt to speak with the Library Director. She gave the "courtesy copy" of the planned Petition and business card (Respondent's Exhibit B) left by Mr. Noonan to the Library Director. The Library Director did not attempt to contact the Union to have a substantive discussion or to inform the Union that the responsibility was being passed on by him to someone else. He did fax a copy of the petition that was left with him to the City Solicitor. Mr. Noonan returned to his own office after dropping off the "courtesy" copy and later completed the Petition indicating at Item #6 that unit composition had not been agreed to by the City. That final version of the Petition for Certification was filed with the PELRB and received by the Library Director on or about October 15, 2001. Again the Library Director faxed a copy of this completed petition to the City Solicitor's office and did not respond to Mr. Noonan to have a substantive discussion or to inform him that the responsibility was being passed on to someone else.

On October 15, 2001 a "Notice of Filing" was forwarded by the PELRB, in its normal course, to the Library Director as the named representative of the City appearing on the Petition for Certification. On October 25, 2001, the City's Chief Negotiator sent a list of all current employees to the PELRB and sent copies to the Library Director and to Mr. Noonan. The letter also made reference to the City's planned exceptions to be filed relating to the professional status of some of the employees proposed for inclusion in the proposed bargaining unit. No other basis for exceptions was contained in that letter. On October 30, 2001 the City filed its exceptions to the Petition for Certification that raised several issues which have since been resolved by the parties prior to the conclusion of the hearing on the City's exceptions as described above in the BACKGROUND section of this decision. On November 6, 2001, the PELRB issued a pre-hearing order scheduling a hearing between the parties for November 16, 2001. Thereafter, the Union informed the PELRB that it was not available on that day and, with the agreement by the City, the hearing was rescheduled until November 29, 2001. On November 9, 2001 Mr. Noonan sent a letter to the Library Director soliciting his interest in discussing unit composition. (Union Exhibit #1). The hearing was conducted on November 29, 2001, however, the record was left open until December 12, 2001 to receive the parties' respective legal memoranda on two of the several issues addressed by the City in its Exceptions #5 and #6 to the Union's Petition for Certification. Those two issues are whether or not the PELRB should dismiss the Union's Petition for failure to be filed in a timely fashion and whether or not a written notice of "intent to bargain" from a union not yet certified as the exclusive representative of a bargaining unit is valid under the requirements of RSA 273-A:3, II(a).

At the outset, it should be noted that when the dust settled in the PELRB boardroom following pre-hearing discussions between the parties and the Hearing Officer, there was no disagreement as to the budget submission date, no disagreement as to the employee position titles being petitioned for and no disagreement as to unit composition in the event the Petition was deemed by the Hearing Officer to be properly

filed. Further, the PELRB acknowledged the existence of a sufficient showing of interest by petitioning employees in excess of the required 30 percent showing of the proposed unit as required by RSA 273-A:3(a). Lastly, the parties had agreed to those positions that were professional and those that were not classified as such and had agreed that in the event of an election the two groups would vote separately. These points of agreement were obtained within a period of approximately 15 minutes in the presence of the Hearing Officer.

The remaining matters for determination in this decision regard the adequacy of the Union's Petition for Certification. The first question to be answered is whether the Union filed a complete petition with the PELRB. During testimony, the City realized that they were in possession of two versions of the Petition, one drafted prior to the Union's attempt to meet with the Library Director, *i.e.* the "courtesy copy", and the completed final version filed with the PELRB and required to be sent to them by the petitioning Union. The "courtesy copy" of the intended Petition for Certification (Respondent's Exhibit A) left with the Library Director, was incomplete because Item #6 that required an indication of agreement between the parties as to unit composition was blank. That blank was completed on the final version of the Petition that filed with the PELRB on October 15, 2001. (Union Exhibit #2) A copy of this completed Petition was provided to the Library Director by certified mail sent on October 12, 2001. A review of the latter and the original on file with the PELRB establishes that the Petition for Certification filed by the Union was complete.

The next question is whether or not the Union filed its Petition for Certification in a timely manner. Administrative rule Pub 301.01(a) expressly states, "A petition for certification as the exclusive representative of a bargaining unit having no certified representative may be filed at any time." In this case there was no certified representative of the proposed unit on October 15, 2001 when the Union filed its Petition for Certification. Further, the filing date of the Union's petition falls on the 167<sup>th</sup> day before the City's qualifying budget submission date which is March 31<sup>st</sup> of each year. That being the case, the Hearing Officer does not find that it was filed, "so close to the budget submission date of the [City] that the board cannot reasonably conduct the election called for in the petition within 120 days of the budget submission date." Pub 301.01(b). However, in the instant case, an election could not be conducted prior to the 120 day period due to the existing scheduling demands upon the PELRB and actions of both parties, including the continuance sought by the Union and agreed to by the City.

As was noted at the beginning of this decision, there was no disagreement between the parties as to the composition of the proposed bargaining unit or as to professional employees shall be segregated for purposes of an election. Both representatives are experienced in their respective professions and in their practice before the PELRB. Both are cognizant of the controlling statute and administrative rules. If more effort had been expended by either of them at the outset of the petition process, an agreed unit composition could have been filed and an election conducted that would have allowed the parties sufficient time to collectively bargain in furtherance of the governing statute's purpose. That purpose may be simply stated as fostering "harmonious and

cooperative relations" between public employers and their employees. The legislature felt that type of labor relationship could be best achieved, in part, by "I. Acknowledging the right of public employees to organize and to be represented for the purpose of bargaining collectively." (Statement of Policy. 1975, 490:1 eff. Dec. 21, 1975).

For its part, the Union could have made an earlier and more ambitious effort to obtain written consent to its petition mindful that if its petition were contested, the PELRB's "Notice of Filing" would allow fifteen days before the City would be required to file their answer if they took the maximum amount of permissible time to do so. The City took that amount of time to file its written exceptions with no intervening effort to contact the Union. For the City's part, had it revealed its actual intent to agree with the unit composition, an amended and agreed unit composition Petition for Certification could have been filed without delay and an election arranged on a schedule that would have served the governing statute's purpose. This would have avoided the expenditure of time and financial resources of the City, the Petitioner's own employees and those of the State of New Hampshire. The City should have responded in some timely manner to Mr. Noonan's contact visit on October 12, in order to discuss unit composition and other issues contained within the Petition.

Instead, now categorized as a "contested" matter, the processing of the Petition was slowed by other administrative events including the scheduling of a contested hearing, which, at a minimum cannot be scheduled without ten days' notice to the parties because it is evidentiary hearing. Pub 201.07. Thereafter, the evidence presented at the hearing must be weighed, time must be allowed for post-hearing briefs to be prepared and filed, a determination must be made, and a decision must be written.

Thereafter, if an appropriate unit is determined, a notice of election will initiate another sequence of events (See generally Pub 303) that includes the compilation of a voting list by the employer, the conduct of a pre-election conference to set polling places and election day rules, and the conduct of a bargaining agent election. All of these actions take time to accomplish even in the most efficient circumstances. In this particular case, the Union was unable to be available for the originally scheduled contested hearing that caused a delay of two additional weeks. Ultimately, the hearing as described within this decision was conducted on November 29<sup>th</sup>, the 121<sup>st</sup> day prior to the budget submission date.

After considering the full set of circumstances accompanying this matter, the Hearing Officer finds that the Union's petition filed with the PELRB on October 15, 2001 qualifies as timely filed on the basis of previous PELRB reasoning that, "while 120 days before budget submission date serves as a minimum time limit, there is no maximum time limit." (See Board Decision # 1996-117, Hudson Federation of Teachers AFT, AFL-CIO v. Hudson School Board).

However, the Hearing Officer does not find, from the facts as presented in this case, that proper notice of intent to negotiate, pursuant to RSA 273-A:3, II(a) requiring at least 120 days' notice, was given to the City. The proverbial cart, *i.e.* notice of intent to

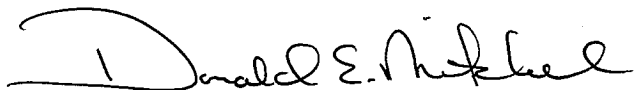
negotiate, was put before the horse, *i.e.* a determination by the PELRB that it had been certified as the exclusive bargaining representative. To accept the Union's position regarding a more general interpretation of the word "party" appearing in RSA 273-A:3, II(a) would empower a broad class of individuals, natural and otherwise, who were not anticipated by the legislature to be involved with ensuing negotiations with a public employer to cause that public employer to undertake preparations for negotiations that may never take place. The obligation to negotiate, as expressed in RSA 273-A:3, I, can only attach to public employers and "the employee organization certified by the board as the exclusive representative". In the comprehensive collective bargaining scheme embodied in RSA 273-A, there is no obligation upon any other "party" to negotiate. It follows that without a certified exclusive representative in existence, proper notice can not emanate from any source to the City. Therefore, the City cannot be compelled to negotiate cost items for inclusion in the present budget cycle. Good faith negotiations of other items remain an obligation of the public employer and the exclusive representative following an election and certification of the Union as the exclusive bargaining representative and subsequent proper notice from the Union to the City.

In light of the previously referenced conditional agreement between the parties as to the composition of the unit upon a finding of the petition being properly before the PELRB, the bargaining unit to be submitted for certification shall consist of all employees in the classifications of Assistant Librarian, Librarian-I, Librarian II, Librarian Clerk I, Librarian Clerk II, Information Support Specialist, and Office Assistant.

An order of election shall issue accordingly.

So Ordered.

Signed this 23<sup>rd</sup> day of January, 2002.



Donald E. Mitchell, Esq.  
Hearing Officer